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In re Application of :
TEMPST et al. :
U.S. Application No.: 10/521,712 :
PCT No.: PCT/US02/33917 : DECISION ON PETITION
Int. Filing Date: 23 October 2002 :
Priority Date: 23 October 2001 :
Attorney Docket No.: D6424PCT :
For: PROTEIN MICRO-ARRAYS AND :
MULTI-LAYERED AFFINITY :
INTERACTION DETECTION :

This is a decision on applicants' "Resubmission of Petition to Revive" filed 19 January 2005, which is being treated as a Petition under 37 CFR 1.181 and 37 CFR 1.137(b).

BACKGROUND

On 23 October 2002, applicants filed international application PCT/US02/33917 which claimed a priority date of 23 October 2001. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 23 April 2004.

On 19 January 2005, applicants filed "Resubmission of Petition to Revive."

DISCUSSION

A. Petition under 37 CFR 1.181

Applicants state in their present petition that the basic national fee, transmittal letter to enter the United States national stage, and a petition to revive under 37 CFR 1.137(a) were received by the USPTO on 23 July 2004. A review of the application file reveals that the papers are not located therein. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Here, applicants have provided a copy of their date-stamped filing receipt. The receipt identifies the application by the title of invention; application number; and the docket number. The evidence submitted by applicants, consisting of a postcard receipt with a PCT/PTO mailroom date stamp of 23 July 2004 which itemizes all the papers filed on said date. The postcard receipt bearing the serial number, title of invention, and attorney docket number is sufficient to indicate that the above papers were received on 23 July 2004.

B. Petition under 37 CFR 1.137(b)

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

With regard to Item (1), the proper response was the payment of the basic national fee of \$385.00.

As to Item (2), the appropriate petition fee of \$665.00 as required by 37 CFR 1.17(m) was submitted.

With regard to Item (3), applicant's statement that "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" complies with 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

CONCLUSION

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application has a **receipt** date of 23 July 2004.

This application is being forwarded to the United States Designated/Elected Office (US/DO/EO) for continued processing including the issuance of a Notification of Missing

Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration along with the \$65 surcharge for filing the oath or declaration after the thirty-month period is required.



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